

Bureau of Indian Affairs, Interior

§ 18.110

§ 18.104 May a tribe include provisions in its tribal probate code regarding the distribution and descent of trust personalty?

No. All trust personalty will be distributed in accordance with the American Indian Probate Reform Act of 2004, as amended.

§ 18.105 How does a tribe request approval for a tribal probate code?

The tribe must submit the tribal probate code and a duly executed tribal resolution adopting the code to the Assistant Secretary—Indian Affairs, Attn: Tribal Probate Code, 1849 C Street, NW., Washington, DC 20240, for review and approval or disapproval.

§ 18.106 What will the Department consider in the approval process?

A tribal probate code must meet the requirements of this section in order to receive our approval under this part.

(a) The code must be consistent with Federal law.

(b) The code must promote the policies of the Indian Land Consolidation Act (ILCA) Amendments of 2000, which are to:

- (1) Prevent further fractionation;
- (2) Consolidate fractional interests into useable parcels;
- (3) Consolidate fractional interests to enhance tribal sovereignty;
- (4) Promote tribal self-sufficiency and self-determination; and
- (5) Reverse the effects of the allotment policy on Indian tribes.

(c) Unless the conditions in paragraph (d) of this section are met, the code must not prohibit the devise of an interest to:

(1) An Indian lineal descendant of the original allottee; or

(2) An Indian who is not a member of the Indian tribe with jurisdiction over the interest in the land.

(d) If the tribal probate code prohibits the devise of an interest to the devisees in paragraph (c)(1) or (c)(2) of this section, then the code must:

(1) Allow those devisees to renounce their interests in favor of eligible devisees as defined by the tribal probate code;

(2) Allow a devisee who is the spouse or lineal descendant of the testator to

reserve a life estate without regard to waste; and

(3) Require the payment of fair market value as determined by the Department on the date of the decedent's death.

§ 18.107 When will the Department approve or disapprove a tribal probate code?

(a) We have 180 days from receipt by the Assistant Secretary—Indian Affairs of a submitted tribal probate code and duly executed tribal resolution adopting the tribal probate code to approve or disapprove a tribal probate code.

(b) If we do not meet the deadline in paragraph (a) of this section, the tribal probate code will be deemed approved, but only to the extent that it:

(1) Is consistent with Federal law; and

(2) Promotes the policies of the ILCA Amendments of 2000 as listed in § 18.106(b).

§ 18.108 What happens if the Department approves the tribal probate code?

Our approval applies only to those sections of the tribal probate code that govern the descent and distribution of trust or restricted land. We will notify the tribe of the approval and forward a copy of the tribal probate code to OHA.

§ 18.109 How will a tribe be notified of the disapproval of a tribal probate code?

If we disapprove a tribal probate code, we must provide the tribe with a written notification of the disapproval that includes an explanation of the reasons for the disapproval.

§ 18.110 When will a tribal probate code become effective?

(a) A tribal probate code may not become effective sooner than 180 days after the date of approval by the Department.

(b) If a tribal probate code is deemed approved through inaction by the Department, then the code will become effective 180 days after it is deemed approved.

(c) The tribal probate code will apply only to the estate of a decedent who dies on or after the effective date of the tribal probate code.